

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Minneapolis Post Office  
Minneapolis, North Carolina

Docket No. A2011-31

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

October 3, 2011

I. INTRODUCTION AND BACKGROUND

On July 26, 2011, the Postal Regulatory Commission (Commission) docketed the Petition For Review of the closing of the Minneapolis Post Office (Minneapolis), located in Minneapolis, North Carolina.<sup>1</sup> On July 17, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.<sup>2</sup> Thereafter, on August 10, 2011, the Postal Service filed an electronic version of the Administrative Record concerning its Final Determination to Close the Minneapolis, NC Post Office, Postal Service Docket Number 1373330-28652.<sup>3</sup> On August 25, 2011, the Postal Service electronically supplemented

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<sup>1</sup> Petition for Review, received from Ryan Carter (Petitioner) regarding Minneapolis, NC Post Office, July 26, 2011 (Petition).

<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 17, 2011 (Order No. 774).

<sup>3</sup> United States Postal Service Notice of Filing of Administrative Record, July 27, 2011 (AR). The first page of this filing indicates it includes 51 items, yet items numbered 23 through 36 are not included.

the Administrative Record, and filed the Final Determination regarding Minneapolis.<sup>4</sup> On August 23, 2011, Petitioner filed a Participant Statement.<sup>5</sup> On August 25 and September 1, 2011, letters in support of the Petition were filed by four Minneapolis residents.<sup>6</sup> The Postal Service filed comments supporting its closure determination on September 19, 2011.

## II. STATEMENT OF FACTS

Minneapolis is described by the Postal Service in its Final Determination as an EAS-11 level post office located in Minneapolis, North Carolina, a part of Avery County, North Carolina. AR Item No. 1, 13. Before closure, 115 of Minneapolis' 142 post office boxes were rented by customers. *Id.*; AR Item No. 15. Minneapolis' retail window averaged 17 transactions accounting for 19 minutes of retail work daily. AR Item No. 33, at 2. Minneapolis' postmaster vacancy has existed since September 1, 2007 when its former postmaster was promoted. Subsequently, "a non-career employee, who is Postmaster Relief (PMR) from Elk Park, was installed as the temporary officer-in-charge (OIC)." Postal Comments, at 2.

On December 10, 2010, the Manager of Post Office Operations (Manager of Operations) requested permission to investigate the possible closure of Minneapolis. AR Item No. 1. The request was granted. *Id.*

On February 11, 2011, an email from the Manager of Operations was sent to the Post Office Review Coordinator (Review Coordinator) stating that a decision had already been made to close Minneapolis and establish rural route service. AR Item No. 19, at 1. On that same day, the Postal Service notified Minneapolis customers of a "possible change in the way [their] postal service is provided." AR Item No. 21 at 1. As

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<sup>4</sup> United States Postal Service Notice of Supplemental Filing, August 25, 2011 (FD).

<sup>5</sup> Participant Statement from Ryan Carter, August 23, 2011 (Participant Statement).

<sup>6</sup> Petition for Review Received from Louise Buchanan Regarding Minneapolis, NC Post Office 28652, August 25, 2011; Letters Regarding the Minneapolis, NC Post Office 28652, September 1, 2011.

described in the posted notice, customers were given the option of receiving pickup and delivery, post office box, retail, and rural route service from the Newland Post Office (Newland) located 9.53 miles away.<sup>7</sup> Included with the posted notice was a questionnaire customers were asked to complete and return by February 18, 2011. *Id.* The notice invited customers to attend a public meeting on February 18, 2011, from 12:30 p.m., until 1:30 p.m., at which Postal Service representatives would answer questions and provide information about postal services, and patrons could express their thoughts and concerns about the potential change in service. *Id.*

Of the 125 questionnaires distributed by the Postal Service, 39 were completed and returned: 0 responded favorably to the proposal; 38 expressed opposition or concern; and 25 expressed no opinion. AR Item No. 23, at 1. As scheduled, the public meeting was held on February 18, 2011, with 79 customers in attendance. AR Item No. 24, at 1.

A formal discontinuance proposal (Proposal) to close Minneapolis was forwarded to Minneapolis' OIC for a posting period of 60 days, March 14, 2011 through May 15, 2011. AR Item No. 35, 37. An invitation to file Proposal based comments was posted, simultaneously. AR Item No. 37. Thirty-five unfavorable Proposal comments were received during the posting period. *Id.*<sup>8</sup>

On July 17, 2011, the Final Determination to close Minneapolis was approved by the Vice President of Delivery and Post Office Operations. FD, at 1. The decision was based on: (1) the postmaster vacancy; (2) a minimal workload and low office revenue;

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<sup>7</sup> Throughout the Administrative Record there are several calculations for the distance between Minneapolis and Newland post offices. These calculations range from 5 miles to 10 miles. AR Item No. 1, 18; FD, at 2; Postal Comments, at 3. Using driving distance data supplied by [www.mapquest.com](http://www.mapquest.com) and information from Minneapolis customer questionnaires, the driving distance between Minneapolis and Newland is 9.53 miles, if one drives the main route around a mountain range; or 5.3 miles, should one drive along a dangerous steep, curvy, side road. See, AR Item No. 22, at ggg. The safer and frequently traveled main route, with a distance of 9.53, will be used for the purpose of these Comments.

<sup>8</sup> The Analysis of 60-Day Posting Comments states 18 questionnaires were distributed and returned, yet it also states that 35 unfavorable comments were received. AR Item No. 40, at 1. It is unclear whether this statement is correct, i.e., 35 separate comments were made in 18 questionnaires; or whether it denotes a tallying error and there were, in fact, 35 questionnaires returned. *Id.*

(3) the delivery and retail options (including the convenience of rural delivery and retail service) from Newland; (4) very little recent growth in the area; and (5) estimated annual savings to the Postal Service of approximately \$49,079. Postal Comments, at 4; FD, at 1-4. In the Final Determination, the Postal Service considered and responded to various concerns expressed by postal customers during the February 18, 2011, public meeting. FD, at 2-5.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

Petitioner asserts Minneapolis carries great significance as a communal meeting place. Petition, at 1; Participant Statement, at 1. Petitioner opposes closing Minneapolis, arguing: (1) convenience and accessibility; (2) effect on the community; and (3) inaccurately calculated savings. *Id.*; see, Participant Statement.

#### B. The Postal Service

On August 10, 2011, the Postal Service filed an electronic version of the Administrative Record concerning its Final Determination to Close the Minneapolis, and on August 25, 2011, it supplemented this document with the Minneapolis Final Determination. In its filings, the Postal Service argues: (1) it has met all procedural requirements of 39 U.S.C. § 404(d); (2) will provide rural route, delivery, and retail service options from Newland, thus alleviating the need to travel to a post office; and (3) the closure of Minneapolis will save the Postal Service an estimated \$49,079, annually. FD, at 1; Postal Comments, at 4, 11.

#### IV. STANDARD OF REVIEW AND APPLICABLE LAW

##### A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; without observance of procedure required by law; or unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.<sup>9</sup>

##### B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

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<sup>9</sup> Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. None of the petitioners in this proceeding requested suspension of the closure of the Minneapolis Post Office.

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

## V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioner and the Petition, and the Postal Service Comments, the Public Representative concludes that the Postal Service has not performed in accordance with the law.

While the Postal Service has identified convenient alternative access to postal services and considered the effect Minneapolis' closure will have on the community; it (1) the decision to close Minneapolis was made pre-maturely, prior to receiving the requisite community input; (2) failed to provide a justifiable reason for closure apart from Minneapolis' deficit; and (3) inflated the estimated savings resulting from Minneapolis' closure. The Public Representative concludes that in light of the foregoing reasons, the decision to close Minneapolis should be remanded.

### A. The Postal Service Denied The Community Meaningful Input

Title 39 U.S.C. § 404 requires the Postal Service afford the community an opportunity to present their views regarding a proposal to close a post office within their community. 39 U.S.C. § 404(d)(1). However, a February 11, 2011, email from the Manager or Operations to the Review Coordinator, makes it clear that the decision to discontinue service from Minneapolis was made without such input. The email, together with the Postal Service's scheduling of the public meeting at an inconvenient time for most customers and boilerplate responses, serve as evidence that the Postal Service

deprived Minneapolis customers of a meaningful opportunity to provide customer input during the review phase of the discontinuance process..

a. The Decision To Close Was Premature

Title 39 U.S.C. § 404 requires the Postal Service afford the community an opportunity to present their views regarding a proposal to close a post office within their community. 39 U.S.C. § 404(d)(1). The statute states, in relevant part:

The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any post office, shall . . . ensure that such persons will have an opportunity to present their views.” 39 U.S.C. § 404(d)(1).

The Postal Service did not adhere to 39 U.S.C. § 404 (d)(1), as it had already committed to closing the Minneapolis by February 11, 2011, before Minneapolis customers had the chance to participate or provide input in the discontinuance process. In a February 11, 2011, email from the Manager of Operations to the Review Coordinator, the Manager of Operations states, “They have chosen to Close the office and Establish service by Rural Route Service.”<sup>10</sup> AR Item No. 19, at 1. The email further instructs the Review Coordinator to be prepared to conduct the remaining steps in the discontinuance process. *Id.* This email was sent the very day the Postal Service first notified Minneapolis customers that closure of their facility was a possibility, and a full week before the receipt of customer questionnaires regarding this possibility. The email is disconcerting for three reasons: it is a violation of the governing statute; the Postal Service appears content to go through the discontinuance process, despite already knowing the result; and it exposes the Postal Service’s lack of sincerity in its dealings with the Minneapolis customers. The latter is most striking when reviewing three subsequently issued set of documents: the February 11, 2011, letter notifying Minneapolis patrons of a

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<sup>10</sup> It is unclear from the email to whom, specifically, the “They” refers.

potential change in service; form letters sent out from February 16 through March 2, 2011, thanking customers for completing questionnaires concerning the proposed discontinuance; and the Notice of Taking Proposal and Comments Under Internal Consideration, dated May 18, 2011. AR Item No. 21, at 1; Item No. 22a2 – 22nnn2; Item No. 37, at 1. In each, the Manager of Operations repeatedly assures Minneapolis customers their input will be considered by the Postal Service before a decision is made regarding Minneapolis' discontinuance. *Id.*

b. Poor Scheduling And Boilerplate Responses To Community Concern

The deliberate scheduling of the Minneapolis' public meeting for the middle of the afternoon on a weekday indicates the Postal Service had little intention of soliciting public participation in its discontinuance review. The meeting was held from 12:30 to 1:30 p.m., on a Friday, February 18, 2011. This is a day and time when most of Minneapolis' working customers are likely to be at their respective places of employment.<sup>11</sup> Despite this inconvenient time, 79 customers were present at the meeting, leaving one to wonder how many others may have attended if the meeting had been scheduled for after working hours or during the weekend. AR Item No. 24. The Postal Service does not offer an explanation for why it chose this particular day and time to hold a community-wide meeting organized to solicit public participation, but its decision to do so speaks volumes.

Although the Administrative Record's table of contents lists an Analysis of Questionnaires as Item No. 23, and Community Meeting Analysis as Item No. 25, there are no such documents included in the Administrative Record or any of the Postal Service's subsequent filings. See, AR. However, the Administrative Record does include one document in which the Postal Service records its responses to customer concerns: the Analysis of 60-Day Posting Comments. AR Item No. 40. The Analysis of

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<sup>11</sup> As stated in the Administrative Record, Minneapolis' population consists primarily of commuters, law enforcement, accommodation and food services, health care, and retirees. AR Item No. 16.



60-Day Posting Comments provides highly generalized, boiler-plate fashioned responses to questions asked by customers of a specific postal facility, in a specific region of the country. Not one of the Postal Service's responses uses information specific to Minneapolis or Newland to address customers' inquiries. *Id.* In fact, the questions, too, appear to have been generalized or summarized, for simpler recording and response purposes.

The Postal Service's decision to close Minneapolis prior to receiving community input, inconvenient scheduling of the public meeting, and failure to provide substantive responses to customers, evidence that the Postal Service had no intention of soliciting customer input for the purpose of determining if closure was appropriate.

For the foregoing reasons, the Public Representative submits that the procedures followed in this case for public involvement do not serve the broader interest of fostering public confidence in the fairness of post office closings. The Commission has recognized that the failure to provide customers with a meaningful opportunity to comment on proposed post office closings fosters the "appearance that seeking customer comment is merely an afterthought" and, as such, only devalues customer input.<sup>12</sup> The goal should not merely be public participation, but meaningful public participation.

#### B. The Decision To Close Minneapolis Has Not Been Adequately Justified

Petitioner aptly states, "a one sentence proposal would have been more honest: 'We want to close the Minneapolis Post Office because it does not make enough money.'" Petition, at 3. In its Final Determination, the Postal Service relies upon a decline in workload and revenue for its decision to discontinue Minneapolis. FD, at 2. The Postal Service's inability to articulate another reason for the closure separate and apart from Minneapolis' poor economic earnings, calls into question whether

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<sup>12</sup> See, Comments of the United States Postal Regulatory Commission on Proposed Amendments to Post Office Consolidation and Closing Process, May 2, 2011, at 3-4 (Commission Comments).

Minneapolis' discontinuance is promulgated solely on its operational deficit. Without any other reason directly stated or implied by reference, the determination to discontinue service at Minneapolis's should be remanded.

Title 39 states that a small post office shall not be closed solely for running a deficit. 39 U.S.C. §101. While the Postal Service adequately considers viable alternatives to service, it fails to articulate a reason for closure that is neither a cause nor symptom of Minneapolis's operational deficit, leaving the Public Representative to question if the closure is actually based on an improper policy decision in violation. Title 39 U.S.C. §101(b), states:

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. **No small post office shall be closed solely for operating at a deficit**, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities. (emphasis added).

The Postal Service states it will save \$49,079, annually, by closing Minneapolis. AR Item No. 18; FD, at 7. For the last three fiscal years, Minneapolis revenues have steadily declined: \$18,914 for FY 2008 (49 revenue units); \$20,802 for FY 2009 (54 revenue units); and \$21,243 for FY 2010 (55 revenue units). FD, at 2. Minneapolis' expenses far outweigh its net profits. In fact, the postmaster salary the Postal Service attributes to Minneapolis is an expense that is more than double Minneapolis' revenues for each of the past three years. FD, at 2. The Postal Service cites Minneapolis' declining revenue, low workload, stagnant population, and postmaster vacancy as if they are four distinct reasons for Minneapolis' discontinuance. *Id.*; Postal Comments, at 4, 9-10. They are not. It is illogical to portray these problems as independent of Minneapolis's deficit problem when, in reality, they are three causes and one symptom thereof.

Despite having shown viable alternatives exist to serve Minneapolis customers, the Postal Service's improper basis for closing Minneapolis renders these alternatives moot. The presence of access alternatives is insufficient to alleviate or validate the

Postal Service's flawed foundation upon which its decision to discontinue is based. In the absence of any other expressed reason for discontinuing service, the Postal Service's closure of Minneapolis constitutes a violation of 39 U.S.C. §101(b), and requires its decision be remanded.<sup>13</sup>

### C. The Estimated Savings From Minneapolis Are Inflated

The Postal Service estimates closing Minneapolis will result in annual savings of approximately \$49,079. AR item No. 18; FD, at 7. The great majority of these savings are attributable to the salary and related benefits of the former postmaster, who was promoted on September 1, 2007. FD, at 7.<sup>14</sup> However, given the circumstances, it is not accurate to attribute the former postmaster's salary to the current savings in this case.

Minneapolis' temporary "OIC is [the] PMR at Elk Park." AR Item No. 15; Postal Comments, at 10. The Postal Service opines, after the discontinuance, the OIC may resume full duties at Elk Park, resign, or be reassigned elsewhere. *Id.* Minneapolis has run without a postmaster for the last 4 years, it is therefore more accurate for the savings calculations in the Final Determination to reflect those savings based on the share of Minneapolis' revenues used to cover costs incurred over the last 4 years, i.e., the temporary OIC's salary, rather than the salary of the long absent, ostensibly higher paid, career-employee postmaster. Since the Postal Service still considers Minneapolis' temporary OIC to be Elk Park's PMR, it may be that this individual's salary is split with, or even fully covered by, Elk Park's revenues. If either is the case, this would cause a significant decrease in the expected savings resulting from Minneapolis' closure. .

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<sup>13</sup> While it appears Congress drafted 39 U.S.C. §101(b) to shield small, less profitable postal facilities, its expressed limitations may become problematic as Postal Service closures increase. The irony of section 101(b) is that it protects those small facilities running a deficit, while leaving those that are marginally profitable vulnerable to closure.

<sup>14</sup> The \$4,800 rent accounts for the remaining savings. *Id.* There is a 30-day termination clause, thus the Postal Service is not charged for vacating the premises, so long as it provides the lessor with 30-days notice of its intent to vacate the premises. AR Item No. 15.

Without more information, the actual savings are unknown. Unless and until the Postal Service provides the temporary OIC's salary, what portion of that salary Minneapolis revenues have covered for the last 4 years, or a justification for considering the former postmaster's salary and related benefits, to be a bona fide "savings" resulting from closure of Minneapolis, the actual savings projected by the Postal Service should be reduced by the amount of such salary and benefits.

## VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Minneapolis Post Office should be remanded.

Respectfully Submitted,

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